

IN THE UNITED STATES DISTRICT COURT FOR THE  
EASTERN DISTRICT OF PENNSYLVANIA

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Enclara Pharmacia, Inc., formerly  
excelleRx, inc. d/b/a Hospice Pharmacia,  
Plaintiff,

v.

Case No. \_\_\_\_\_

Merida Healthcare Group, Merida Healthcare  
Group d/b/a Bee Caring Hospice Healthcare,  
Inc., Bee Caring Hospice Healthcare, Inc.,  
Illumina, LLC, Professional Hospice Care,  
Inc., and Bee Caring Hospice, LLC,

**COMPLAINT  
(JURY TRIAL DEMANDED)**

Defendants.

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For its Complaint against Defendants, Plaintiff states and alleges as follows:

**PARTIES, JURISDICTION AND VENUE**

1. Plaintiff Enclara Pharmacia, Inc. ("Plaintiff") is a Delaware corporation with a principal place of business located at 1601 Cherry Street, Suite 1800, Philadelphia, Pennsylvania 19102. Plaintiff is formerly known as excelleRx, inc., d/b/a/ hospice Pharmacia.

2. Defendant Merida Healthcare Group and Merica Healthcare Group d/b/a Bee Caring Hospice Healthcare, Inc. ("Merida") is a Texas corporation with a principal place of business located at 1514 S. 77 Sunshine Strip Ste. 21-B, Harlingen, Texas 78550.

3. Defendant Bee Caring Hospice Healthcare, Inc. ("Bee Caring Health") is a Texas corporation with a principal place of business located at 2809 S. Expressway 83, Harlingen, Texas 78550.

4. Defendant Illumina, LLC ("Illumina") is a Texas limited liability company with a principal place of business located at 4444 Corona Drive, No. 212, Corpus Christi, Texas 78411.

5. Defendant Professional Hospice Care, Inc. (“Professional”) is a Texas corporation with a principal place of business located at 6010 Mcpherson St., Suite 100, Laredo, Texas 78041.

6. Defendant Bee Caring Hospice, LLC (“Bee Caring Hospice”) is a Texas limited liability company with a principal place of business located at 2900 Mossrock, No. 370, San Antonio, Texas 78230.

7. The Court has subject-matter jurisdiction over this case under 28 U.S.C. § 1332(a) based upon the complete diversity of citizenship between the parties and the fact that the amount in controversy, exclusive of costs and interest, exceeds the sum of \$75,000.00.

8. Venue is proper in this judicial district under 28 U.S.C. § 1391(b).

**FACTS COMMON TO ALL COUNTS**

9. Upon information and belief, Merida is a healthcare organization specializing in home health and hospice related services with seven (7) locations throughout Texas.

10. Upon information and belief, Bee Caring Health, Illumina, Professional and Bee Caring Hospice are all a part of the Merida group (Merida, Bee Caring Health, Illumina, Professional and Bee Caring Hospice collectively referred as “Defendants”).

12. Plaintiff provides hospice pharmacy services to hospice providers like Defendants.

13. In or around February 2011, Plaintiff and Bee Caring Health entered into a written agreement whereby Plaintiff agreed to provide to Bee Caring Health all pharmaceuticals and related services for the palliation and symptom management of Bee Caring Health’s patients, as directed by Bee Caring Health (the “Agreement”).

14. The Agreement contains a Fee Schedule that outlines Bee Caring Health's payment obligations to Plaintiff.

15. Thereafter Plaintiff began to provide pharmaceuticals and related services to Bee Caring Health in accordance with the Agreement.

16. In October 2011, at Bee Caring Health's request, the Agreement was expanded to include the provision of pharmaceuticals and related services to Illumina.

17. In December 2011, at Bee Caring Health's request, the Agreement was expanded to include the provision of pharmaceuticals and related services to Professional.

18. Further, during the course of the Agreement, at Bee Caring Health's request, the Agreement was expanded to include the provision of pharmaceuticals and related services to Bee Caring Hospice.

19. Plaintiff provided pharmaceuticals and related services to Bee Caring Health, Illumina, Professional, and Bee Caring Hospice in accordance with the Agreement.

20. Upon information and belief, after the Plaintiff and Bee Caring Health entered into the Agreement, Bee Caring Health, Illumina, Profession and Bee Caring Hospice organized under the umbrella entity of Merida.

21. Beginning in 2014, all communication and direction regarding the Agreement came from Merida.

22. Plaintiff invoiced Defendants for the pharmaceuticals and related services provided to Defendants in accordance with the Agreement.

23. Plaintiff sent a single invoice for the products and services provided to all of the Defendants.

24. Payment for the invoices was made from each of the Defendants at various times.

25. Due to Defendants' breach of its payment obligation under the Agreement, Plaintiff made a demand for payment in full, or a suitable payment plan to resolve the outstanding balance in October 2015..

26. Despite demand, to date, Defendant has failed to pay the outstanding balance owed to Plaintiff in full.

27. Defendants also failed to contact Plaintiff to discuss a suitable payment plan to resolve Defendants' outstanding balance to Plaintiff.

28. As a result of Defendants' continued default of the Agreement, Plaintiff terminated the Agreement in November 2015.

29. As of today's date, the total balance owed to Plaintiff is \$389,282.93, plus a service charge required by the Agreement at the rate of 1.5% per month. A true and correct copy of a statement of account evidencing the balance due is attached hereto and marked as Exhibit "A".<sup>1</sup>

30. Plaintiff has incurred and will continue to incur attorney fees and costs in connection with enforcing its rights under the Agreement.

31. Plaintiff has satisfied all conditions under the Agreement.

32. The Agreement provides that any dispute related to the Agreement related to the same shall be determined in accordance with Pennsylvania law.

**COUNT I**  
**BREACH OF CONTRACT**

33. Plaintiff incorporates the preceding averments as though the same were stated more fully herein at length.

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<sup>1</sup> Invoices evidencing the amount due are not attached hereto in order to protect patient privacy. Said invoices are available for inspection upon demand.



34. The Defendants contracted and agreed to pay the price for the pharmaceutical products and related services that Plaintiff provided to or for the benefit of the Defendants.

35. The Defendants breached their contractual obligations to Plaintiff by failing to pay the purchase price for the pharmaceutical products and related services that Plaintiff provided to or for the benefit of Defendants.

36. Plaintiff is entitled to recover the purchase price for the pharmaceutical products and related services in the principal amount of \$389,282.93.

37. Plaintiff is also entitled to recover a service charge of 1.5% per month and all of its attorney fees, costs and disbursements.

WHEREFORE, Enclara Pharmacia, Inc. respectfully requests that this Honorable Court enter a judgment in its favor and against Defendants in the principal amount of \$389,282.93 plus service charges, late fees, costs, attorneys' fees and such other relief that this Honorable Court deems just.

**COUNT II**  
**UNJUST ENRICHMENT**

38. Plaintiff incorporates the preceding averments as though the same were stated more fully herein at length.

39. Plaintiff provided pharmaceutical products and related services to Defendants at Defendants' request.

40. Defendants used the pharmaceutical products and related services for the benefit of their patients.

41. Defendants have been enriched in an amount equal to the reasonable value of pharmaceutical products and related services that they acquired from Plaintiff.

42. It would be unjust, inequitable and morally wrong for Defendants to retain the benefit and value of the pharmaceutical products and related services that it acquired from Plaintiff without paying for those products.

43. Plaintiff is entitled in equity to recover the reasonable value of the pharmaceutical products and related services supplied to Defendants by Plaintiff.

44. Plaintiff is also entitled to recover a service charge of 1.5% per month and all of its attorney fees, costs and disbursements.

WHEREFORE, Enclara Pharmacia, Inc. respectfully requests that this Honorable Court enter a judgment in its favor and against Merida Healthcare Group, Bee Caring Hospice Healthcare, Inc., Illumina, LLC, Professional Hospice Care, Inc., and Bee Caring Hospice, LLC in the principal amount of \$389,282.93 plus service charges, late fees, costs, attorneys' fees and such other relief that this Honorable Court deems just.

#### **DEMAND FOR JURY TRIAL**

Pursuant to Rule 38 of the Federal Rules of Civil Procedure and the Seventh Amendment to the United States Constitution, Plaintiff hereby demands a trial by jury.

#### **PRAYER FOR RELIEF**

WHEREFORE, Plaintiff respectfully prays for this Court's relief as follows:

- (a) Awarding Plaintiff money damages against Defendant in the principal amount of \$389,282.93;
- (b) Awarding Plaintiff a service charge at the rate of 1.5% per month;
- (c) Awarding Plaintiff all of its attorney fees, costs and disbursements; and
- (d) Granting Plaintiff all such other and further relief as the Court deems just and equitable under the circumstances.

NORRIS MCLAUGHLIN & MARCUS, P.A.

Dated: 4/5/16

By: 

Rebecca J. Price, Esquire  
I.D. No.206182  
515 Hamilton Street, Suite 502  
Allentown, PA 18101  
Telephone: (610) 391-1800  
Facsimile: (610) 391-1805  
Email: [rprice@nmmlaw.com](mailto:rprice@nmmlaw.com)

# EXHIBIT A



## DETAIL HISTORICAL AGED TRIAL BALANCE

System: 1/25/2016 12:54:12 PM  
User Date: 1/25/2016Page: 1  
User ID: kbalentExcellerRX, Inc.  
Receivables Management

## Ranges:

Customer ID: First - Last  
Customer Class: First - Last  
Salesperson ID: First - Last  
Sales Territory: First - LastCorporate Affil: BEE - BEE  
Customer Name: First - Last  
Short Name: First - Last  
Posting Date: First - 1/25/2016State: First - Last  
Telephone: First - Last  
ZIP Code: First - LastAccount Type: All  
Aging Date: 1/25/2016Customer: by Customer Name  
Document: by Document Date

Exclude: Zero Balance, No Activity, Fully Paid Documents, Unposted Applied Credit Documents, Multicurrency In

\* - Indicates an unposted credit document that has been applied

Customer: 39201		Name: Bee Caring Hospice-Harlingen, TX		Account Type: Open Item					
Corporate Affil: BEE		Salesperson: KATE		Credit: Unlimited					
Contact: Stephen Linders		Territory: 1		Terms: Net 30					
Phone: (956) 622-5055 Ext. 000C									
Document Number	Type	Date	Amount	Discount	Writeoff	Current	0 - 30 Days	31 - 60 Days	Over 90 Days
HP193862	SLS	10/15/2015	\$5,471.75					\$5,471.75	
HP195903	SLS	11/18/2015	\$5,392.66					\$5,392.66	
HP197953	SLS	12/15/2015	\$5,229.60				\$5,229.60		
HP200023	SLS	1/15/2016	\$697.68			\$697.68			
<b>Totals:</b>						<b>\$697.68</b>	<b>\$5,229.60</b>	<b>\$5,471.75</b>	<b>\$0.00</b>
						<b>Balance</b>			
						<b>\$16,791.69</b>			

Customer: 41926		Name: Bee Caring Hospice-San Antonio, TX		Account Type: Open Item					
Corporate Affil: BEE		Salesperson: KATE		Credit: Unlimited					
Contact: Kermit		Territory: 1		Terms: Net 30					
Phone: (956) 423-1197 Ext. 000C									
Document Number	Type	Date	Amount	Discount	Writeoff	Current	0 - 30 Days	31 - 60 Days	Over 90 Days
HP191948	SLS	9/15/2015	\$65,163.81						\$65,163.81
HP193962	SLS	10/15/2015	\$66,955.25					\$66,955.25	
HP196003	SLS	11/18/2015	\$67,461.98				\$61,348.03	\$67,461.98	
HP198053	SLS	12/15/2015	\$61,348.03			\$8,321.10			
HP200123	SLS	1/15/2016	\$8,321.10						
<b>Totals:</b>						<b>\$8,321.10</b>	<b>\$61,348.03</b>	<b>\$67,461.98</b>	<b>\$65,163.81</b>
						<b>Balance</b>			
						<b>\$269,250.17</b>			

Customer: 41446		Name: Illumina LLC-Corpus Christi (Bee Caring)		Account Type: Open Item					
Corporate Affil: BEE		Salesperson: KATE		Credit: Unlimited					
Contact: (361) 853-2000 Ext. 000C		Territory: 1		Terms: Net 30					
Document Number	Type	Date	Amount	Discount	Writeoff	Current	0 - 30 Days	31 - 60 Days	Over 90 Days
HP189347	SLS	8/14/2015	\$22,125.81						\$22,125.81
HP191941	SLS	9/15/2015	\$21,501.10						\$21,501.10
HP193955	SLS	10/15/2015	\$18,864.73						\$18,864.73
HP195996	SLS	11/18/2015	\$17,242.84						\$17,242.84

ExceleRX, Inc.

System:  
User Date:

[illegible]